

Petition of Exception for Review to Withdraw Abandonment Notice -**Abandonment Notice**
dated 04/01/07Publication No:
US 2005-0225720 A1Application File 10/805,633
Filing Date 03/22/2004
Phillip Vincent Ridings
Conf #3680Examiner
DANG, Hung Xuan**RECEIVED**
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APR 27 2007

This is in Response to the Abandonment Claim made by Examiner DANG, Hung Xuan dated April 1, 2007

Part 1. Applicant's failure to timely file a proper reply to the Office letter mailed on 31 July 2006?

and

Part 7. Via telephone interview on 3/28/07, Attorney Wilson Danial Swayze indicated that no response will be given and the application is go to abandoned..

I take exception to both issues...

Part 1. - ExceptionsIndex of Claims
Filed by Examiner John R. Sanders
Dated 03-09-2006

Sent me a letter stating that the only thing wrong with my application at that time were the Claims... they had to be rewritten according to proper code.

In turn I hired an EX- Examiner / Attorney Danial Swayze to rewrite my claims and resubmit them (what I was told by Mr. Swayze is that I had 6 months to respond) After three months I contacted Mr. Swayze and he informed me that he was waiting on my approval and had not filed the NEW CLAIMS with the Patent Office... I asked him to proceed with the filing thinking I still had another 3 months left. I was wrong... I discovered.. I only had 3 months to respond...

Part 1. Applicant's failure to timely file a proper reply to the Office letter mailed on 31 July 2006? (THIS IS NOT A LETTER TO ME AS STATED BY THE EXAMINER) This is an Extension of Time that was granted to process the New Claims already in your system.According to your own records the New Claims were accepted and filed within your system.
NEW CLAIMS
Dated 06/20/2006

The New Claims and Abstract arrived in your office on 06/20/2006, just 11 days after the 3 month period I was granted to respond in a timely fashion. Granted the missing of the first dead line of 3 months is my fault best on bad information. After your office received my New Claims... my Application was put on hold status by the "Billing Department" until and Extension fee could be paid... I was informed it would just be \$65 by Mr. Swayze. The next day I was contacted and informed the new fee was \$225 because I missed the one month deadline by 5 days. However, because the letter notifying me that I needed to pay the Extension Fee sat in your office system for 14 days it arrived 5 days after the due date for the one month filing fee.

I called to talk to the billing department... I explained the situation and wondered why I was now having to pay \$225 when I received the letter 5 days after the one month cut off...and it sat in their system for 14 days before it was mailed to me... I didn't think that was fair at all. The operator then told her supervisor what happened but didn't seem to care and informed me it was still late and I would have to pay the full amount or Abandon the Application. I mailed a check for \$225 on July 27th 2006... I then asked over the phone with the same operator what would happen next. She informed me that once the payment was made the Application would be processed. Great! So I thought!

Extension Time Granted
Dated 07/31/06

So I waited...

From the Aug 2006 - Nov 11, 2006

Nothing was done on my file as noted in the Patent Application Information system posted on the web.

On 11/08/06 my application became a case file again and was Docketed this time to a NEW Examiner... Hung Xuan Dang.

Each month I checked on it's non progress over a simple correction with New Claims that had already been filed (06/20/2006)... nothing! For the next 5 months...Nothing was done over this simple correction in payment to process my application! The Case was Docketed for 5 months?

I come home Thursday night on 04/05/07 and decided to check on any changes to my application via my web search only to discover a "New Abandonment" Filed by the New Examiner over the action stated in Part 1 (The Extension of Time) that has already been filed and paid for? This document, noted in Part 1 of the New Abandonment, is obviously not a "Notice or Office Action" but clearly shows at the bottom of the page that I had paid the Extension Fee, the check had been processed and accepted as payment with a stamped date of 08/01/2006. That upon said payment the New Claims that had already been filed on 06/20/2006 would be reviewed in a timely fashion. The document sited in Part 1 of this new Filing of Abandonment was not another "Notice" to me over an unresolved "Office Action"... it is merely an oversight made by the examiner thinking this was a New Office Action that I was not acting on. A simple oversight that I can understand... but having called 3 time to talk to Mr. Dang with no return calls to help solve this as quickly as possible resulted in my filing this Petition of Exception and withdrawl of Abandonment.

Part 7) Possible legal action on this Abandonment letter

Indicates that Mr. Dang contact Mr. Swayze who is not on record on my application and does not have any authority to make or take any action on my application. There is no Power of Attorney on file with your office allowing anyone, other than myself, to make any decisions on my application, yet Mr. Dang called Mr. Swayze on the 03/28/07 and not me? Why, when the New Claims had already been submitted back in June of 2006 would he even place this application back into abandonment?

So for 9 months I've been waiting on the results of my Application only to have it pushed back into Abandonment because of two mistakes.

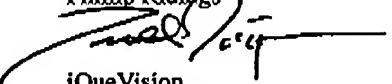
- 1) The New Claims were already on file with your office and all that was required was an Extension Fee that was paid and granted on 31, July 2006. The only thing that had to be done was review the new claims and file finish processing my patent application!
- 2) The Examiner called someone who was clearly not authorized with a powe of attorney to answer any questions regarding my patent application.

FYI - While Mr. Swayze currently denies telling Mr. Dang to abandon the application! I can't ignore fact that Mr. Dang made the call and that while I don't feel Mr. Dang would lie, since its on record, Mr. Swayze would not like the idea of being sued for improper action, without a power of attorney on record with your office, resulting in the loss of my patent application by having an unauthorized conversation with Mr. Dang.

While I understand the work load is great and processing over 350,000 claims a year is a very hard job... I know you are doing your best with all of them... but still you have to admit there are some holes here that where not created by me as I have complied with every action as requested! I have no doubt that had Mr. Dang called me instead I would not be in this situation now and my application would be in it's final stages of becoming a full patent.

This is why I would like to make a formal request that you withdraw the Abandonment Noticed filed 04/04/07. Four years ago I started this venture 03/22/03 with my provisional patent... I'm hoping you can help resolve this issue in a timely fashion...it would be greatly appreciated! Thank you for your time and consideration!

Phillip Ridings


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PS if you have any openings for Examiners... let me know! I hear Einstein start out his career that way!